UNITED STATES PATENT AND TRADEMARK OFFICE

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			EXAMINER
8791	7590	11/15/2006	CHOWDHURY, SUMAIYA A

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2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>10/12/06</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-30 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 18 is objected to because of the following informalities:

In claim 18, line 1, "claim 18" should be changed to ---claim 16--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 4, 6-9, 11, 13, 15-16, 19, 21-24, 27, 29-30, are rejected under 35 U.S.C.

103(a) as being unpatentable over Herz in view of Feder (US 2001/0024239).

As for claims 1 and 24, Herz teaches a method and machine readable medium

(502 – Fig. 5) having stored thereon data representing sequences of instructions which

when executed by a processor, cause the processor to:

generate content to be broadcast from a content provider system (402 – Fig. 5)

by embedding content descriptors and metadata (content profile) within content data

(video program or EPG data) stored on the content provider system – (Content profile

describe the content/characteristics of the video program - col. 9, line 65 – col. 10, line

2, col. 25, lines 2-6);

broadcast said content to at least one receiver (412 – Fig. 5) connected with said

content provider system via a network (Fig. 5) – col. 46, lines 54-60, lines 25-43;

receive said content at the receiver – col. 46, lines 54-60, lines 25-43;

selectively caching or presenting said content at the receiver based on a

comparison (agreement matrix) of the content descriptors and metadata embedded in

the content and user preference data (customer profile) stored on the receiver – col. 25,

lines 16-30;

accumulate user preferences regarding content received – col. 41, lines 25-41;

transmit said user preferences from the receiver – col. 41, lines 59-65; 508 –

Fig. 5; and

creating a playlist based on said user preferences, wherein the playlist to

represent an ordered list of content – col. 42, lines 12-20; and

However, Herz fails to teach:

Determining, based on the playlist, a data rate and time to transmit the playlist to

the receiver.

In an analogous art, Feder teaches:

Determining, based on the playlist, a data rate and time (while TV is not in use; [0349]) to transmit the playlist to the receiver – [0024], lines 10-14, [0346], [0349], [0367], [0417].

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Herz's invention to include the above mentioned limitation, as taught by Feder, in order to use resources as needed to conserve bandwidth.

As for claim 4, 11, 13, 21, 27, Herz and Feder teaches the claimed limitations. In particular, Herz teaches wherein said accumulating user preferences comprises requesting active user feedback regarding the user's opinion of the content – col. 14, lines 10-35.

As for claim 6, 22, 29, Herz and Feder teaches the claimed limitations. In particular, Herz teaches wherein said accumulating user preferences comprises passive user participation by gathering information regarding the user's pattern of consuming content without requesting direct feedback from the user – col. 41, lines 25-41 lines 59-65, col. 42, lines 14-20.

As for claim 7, 15, 23, 30, Herz and Feder teaches the claimed limitations. In particular, Herz teaches wherein said transmitting said user preferences is preformed

via a persistent back-channel (telephone system return and CATV system return)

between the receiver and the content provider system – col. 41, lines 42-46.

Claim 8 contains the limitations of claims 1 and 19 and is analyzed as previously

discussed with respect to that claim. Claim 8 additionally calls for the following:

broadcast content over a first network (404 – Fig. 5) connected with the content

provider system (402 – Fig. 5) – col. 4, line 64 – col. 42, line 7,

receive feedback (508 – Fig. 5) regarding user preferences via a feedback

channel connected with the content provider (The feedback channel between STB 412

and 508 is connected to 402 via 404 and 504) – col. 41, lines 59- col. 42, line 10, and

a head-end (502 – Fig. 5) connected with said first network to receive content

from the content provider system, encapsulate said content within a multiplex, and

transmit said multiplex over a second network (410 – Fig. 5) connected with the head-

end (Referring, to Fig. 5, the headend receives channels of content from 404 which it

multiplexes and transmits to nodes 410. - col. 41, lines 59- col. 42, line 10);

a receiver (412 – Fig. 5) connected with said second network to receive the

multiplex from the head-end – col. 46, lines 54-60, lines 25-43.

As for claim 9, Herz and Feder teaches the claimed limitations. In particular, Herz

teaches wherein said receiver caches content containing content descriptors that match

said user preference data stored on the receiver – col. 45, lines 14-23.

As for claim 16, Herz and Feder teaches the claimed limitations. In particular,

Herz teaches a content provider system comprising:

a playlist composition subsystem (504 – Fig. 5) to embed content descriptors and

metadata (content profile) within content data (video program or EPG data) stored on

the content provider system (502- Fig. 5) – col. 25, lines 2-6;

a transmitter (504 – Fig. 5) to broadcast said content over a first network (410 –

Fig. 5) connected with the content provider system – col. 42, lines 1-5;

a channel rating analysis subsystem (508 – Fig. 5) to receive feedback regarding

user preferences (customer profile) via a feedback channel connected with the content

provider, and create a playlist based on said feedback, wherein the playlist to represent

an ordered list of content – col. 41, lines 59-65, col. 42, lines 12-20.

However, Herz fails to teach:

A scheduler to determine, based on the playlist, a data rate and time to transmit

the playlist to the receiver.

In an analogous art, Feder teaches:

A scheduler to determine, based on the playlist, a data rate and time (while TV is

not in use; [0349]) to transmit the playlist to the receiver – [0024], lines 10-14, [0346],

[0349], [0367], [0417].

It would have been obvious to one of ordinary skill in the art at the time of

applicant's invention to modify Herz's invention to include the above mentioned

limitation, as taught by Feder, in order to use resources as needed to conserve

bandwidth.

As for claim 19, Herz and Feder teaches the claimed limitations. In particular,

Herz teaches a receiver comprising:

a receiver (412 – Fig. 5) connected with a network (Fig. 5) to receive broadcast

multiplex from a content provider system (502 – Fig. 5) wherein the multiplex contains

content descriptors and metadata (content profile) within content data (video program or

EPG data) – col. 25, lines 2-6;

a de-multiplexer (906 – Fig. 9) to de-multiplex the multiplex to extract the content

data from the content provider system and receive content – col. 45, lines 17-23; and

an application (908 – Fig. 9) to selectively cache or present the content based on

a comparison of the content descriptors and metadata embedded in the content and

user preference data stored on the receiver – col. 29, lines 16-30,

accumulate user preferences regarding content received – col. 41, lines 25-41,

and

transmit said user preferences via a feedback channel coupled with the receiver

– col. 41, lines 59-65.

wherein the receiver to receive a playlist based on said user preferences,

wherein the playlist to represent an ordered list of content - col. 42, lines 12-20;

However, Herz fails to teach:

Determining, based on the playlist, a data rate and time to transmit the playlist to
the receiver.

In an analogous art, Feder teaches:

Determining, based on the playlist, a data rate and time (while TV is not in use;
[0349]) to transmit the playlist to the receiver – [0024], lines 10-14, [0346], [0349],
[0367], [0417].

It would have been obvious to one of ordinary skill in the art at the time of
applicant's invention to modify Herz's invention to include the above mentioned
limitation, as taught by Feder, in order to use resources as needed to conserve
bandwidth.

5. Claims 2, 3, 10, 20, 25, 26 are rejected under 35 U.S.C. 103(a) as being
   unpatentable over Herz and Feder as applied to claim 1/2/19/24/25 above, and
   further in view of Kermode (6018359).

As for claims 2, 3, 10, 20, 25, 26, Herz and Feder fail to teach wherein said
receiving said content comprises caching the content on to a hard disk drive within the
receiver.

In an analogous art, Kermode teaches wherein said receiving said content
comprises caching the content on to a hard disk drive within the receiver in order to

temporarily store the content until it is consumed such that memory is not used up – col. 5, lines 34-41.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Herz and Feder's invention to include wherein said receiving said content comprises caching the content on to a hard disk drive within the receiver, as taught by Kermode, for the advantage of temporarily storing the content until it is consumed such that memory is not used up.

6. Claims 5, 12, 18, and 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz and Feder as applied to claim 1/16/24 above, and further in view of Diwan (6801936).

As for claims 5, 12, 18, 28 Herz and Feder fail to teach wherein said broadcasting comprises transmitting a digital data service via an IP multicast.

In an analogous art, Diwan teaches broadcasting comprises transmitting a digital data service via an IP multicast in order to provide a powerful mechanism by which to distribute information to a very large number of subscribers from a single source - col. 2, lines 41-52.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Herz and Feder's invention to include broadcasting comprises transmitting a digital data service via an IP multicast, as taught by Diwan, for

the advantage of providing a powerful mechanism by which to distribute information to a

very large number of subscribers from a single source.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz and

Feder as applied to claim 16 above, and further in view of Bigham (5544161).

As for claim 17, Herz and Feder fail to teach wherein said first network comprises

an Asynchronous Transfer Mode (ATM) backbone.

In an analogous art, Bigham teaches wherein the network comprises an ATM

backbone in order to provide centralized control processing and local distribution of

video data – col. 40, lines 26-40

It would have been obvious to one of ordinary skill in the art at the time of

applicant's invention to modify Herz and Feder's invention to include wherein the

network comprises an ATM backbone, as taught by Bigham, for the advantage of

providing centralized control processing and local distribution of video data.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz and

Feder as applied to claim 8 above, and further in view of Del Sesto (6530082).

As for claim 14, Herz and Feder fail to teach wherein said multiplex comprises an

MPEG2 multiplex.

In an analogous art, Del Sesto teaches transmitting data using mpeg2 multiplex –
col. 7, lines 65-67.

It would have been obvious to one of ordinary skill in the art at the time of
applicant's invention to modify Herz and Feder's invention to include wherein said
multiplex comprises an MPEG2 multiplex, as taught by Del Sesto, for the advantage of
multiplexing data using a standard which uses minimal space yet retains excellent video
quality.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in
this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37
CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within
TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumaiya A. Chowdhury whose telephone number is . (571) 272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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